



Town of Carlisle

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Office of

PLANNING BOARD

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DRAFT

MINUTES

October 10, 1996

**DISCUSSION: Growth Management Proposals for Fall Town Meeting Article
Review of Process to Complete Ice Pond Subdivision
Review of enforcement measures for Overlook Drive Special Permit
Review of Pending Litigation (Executive Session)**

Chair Colman called the meeting to order at 7:30 p.m. Colman, Duscha, Hengeveld, LaLiberte, Tice and Yanofsky were present. Epstein was absent. Also present were Planning Administrator Mansfield, Town Counsel Judith Cutler of Kopelman and Paige, and John Dalton of the Long-Term Capital Requirements Committee.

The minutes of the Special Meeting of October 6, 1996, were approved as amended on a motion by Duscha, seconded by Tice, 4-0-2, Hengeveld and Tice abstaining. The amendments were:

- p.1 LaLiberte requested deleting the specific report of a conversation between Yanofsky and Town Counsel Lane in paragraph 3;
- p. 2 In the last paragraph, the reference to LaLiberte should be to Dalton;
- p. 3 In the first paragraph, Duscha asked that "and health" be added after "public safety," and in the second paragraph, that the second sentence referring to specific properties be deleted.
- p. 4 Yanofsky suggested a slight rewording of the next to last paragraph to indicate risks are to the Town rather than townspeople.

Valchuis v. Planning Board

LaLiberte moved to go into Executive Session to discuss strategy with respect to pending litigation regarding the appeal of the denial of an ANR Plan on Berry Corner Lane. Duscha seconded the motion, and the vote by roll call was unanimous, 6-0, in favor of the motion. At the conclusion of the discussion with Town Counsel, Duscha moved and Tice seconded the motion to return to open session, and that vote, by roll call was also unanimous, 6-0.

Growth Management Proposals for Fall Town Meeting Article

Colman reviewed the actions of the Board of Selectmen's meeting of October 8, called as an all-board meeting to review town-wide goals, but where they also decided not to place the Planning Board's proposed growth management article on the Town Meeting warrant. He said that the meeting was very different from the planned agenda, and there was very little discussion of goals. Towards the end of the meeting, he said, the Town Administrator reviewed the warrant articles submitted to date, and Selectman Fitzgerald expressed surprise that the Planning Board had not submitted articles. Colman then handed over the three articles that Mansfield had been preparing to submit the following day, before the established deadline. The growth management article was stated in very general terms, as the Board had agreed at its meeting of October 6. Fitzgerald questioned its intent, and Colman explained that it was designed to place a limit on the issuance of building permits.

At that point, he explained, the questions from the floor ended and the meeting appeared to adjourn, as he and Mansfield and almost everyone else there left the building. But the Selectmen stayed and continued their regular meeting. During that meeting, the Selectmen decided not to place the growth management article on the warrant, which they believed was their right, after the Town Administrator had told them the article was about a building moratorium. She had, in turn, learned that from Town Counsel Betsy Lane. Selectmen said that there should have been more public discussion and input into this proposal before it was put on the warrant.

Once the warrant was closed on the following day at 3:00 p.m., Colman reported, Town Administrator DeBenedictis sent him a fax reporting the Selectmen's action. He said he spoke with her Thursday morning and told her he thought it was extremely rude to inform the Planning Board of the Selectmen's action in that way. He had a subsequent conversation with Fitzgerald, who reported that this was the only article voted on that night, and who apologized for the flaws in communication. He agreed with Colman that volunteers should not be criticized for doing their jobs. However, Colman said, Selectman Watson found no problem with the method of communication, and Selectman Chaput feared the Board would be flooded with preliminary subdivision plans if this article went forward without prior public input. Colman said he replied that citizens might bring in a petition to place this article on the warrant, and that he planned to talk to Chaput again after tonight's meeting.

Dalton asked if Colman thought that the Selectmen would oppose such an article at Town Meeting, if brought by citizen petition. Colman replied he thought they would, if only on procedural issues. He added he thought they wanted to have a part in the decision. Yanofsky responded that an initiative such as a moratorium or building permit cap has to be handled, at the outset, in confidence. After the Planning Board had decided on the details of the proposal, which discussion had been scheduled for tonight, she said,

the Selectmen would have been brought into the process. LaLiberte added that no final decision on a moratorium had been reached by the Board at its October 6 meeting; rather the proposed article was for "growth management." He said he thought Selectmen, not the Planning Board, had acted too hastily.

Colman noted that the Board could still go forward with its proposal, using the petition route. Yanofsky observed that the "haste" had more to do with the warrant schedule set by the Selectmen than with the Planning Board's methods. She asked whether it was worth going forward, in spite of the Selectmen's position. Colman replied that would be his intent.

LaLiberte, however, suggested that the Board first discuss general questions about growth management with Town Counsel. He explained that by a "moratorium," he meant a suspension of the issuance of building permits for 6-8 months. He said he understood this would not prevent developers from submitting subdivisions plans.

Attorney Cutler agreed. She explained that anyone who gets a building permit before the first day of publication of the notice of the Planning Board's public hearing on the zoning bylaw amendment is safe. Anyone who applies after that date but before the Town Meeting vote is "in limbo." If a landowner submits a preliminary subdivision plan before the Town Meeting vote, followed by a definitive plan within 7 months, they are subject to an 8-year grandfathering of the current bylaws. Colman asked then, why would everyone file such plans? Cutler replied that some people just don't pay attention. Moreover, not everyone has subdividable land, or are immediately ready to act.

LaLiberte suggested that one reason that a moratorium makes sense is that it would give the Board an opportunity to develop a comprehensive open space bylaw. He asked if that was a sufficient reason. Cutler replied that it was not; and that instead the Board could take the position that they would not grant any more special permits for conservation clusters until a new bylaw was in place. But Colman asked, what if they Board proposed to make a change in the by-right provisions of the bylaw, affecting subdivision plans? Cutler replied that this might be a more valid reason. She said that an "emergency" isn't necessary; a moratorium is a recognition that there is a need for a breather, but there should be an important issue at stake.

Yanofsky explained that her primary purpose to support a moratorium was to initiate phased growth controls that may include incentives to use cluster or open space provisions. She said we need a breather to do this, and expressed dismay that the Board would still have to process subdivision applications during a moratorium. She also speculated that the developers who regularly come before the Board would not seek to create an adversarial relationship by flooding the Board with plans. She said that while the development rate of the town for the next two years is a given, the primary question is how do we affect what is going to happen after that. She asked Counsel for advice on the best way to achieve "smoothing out" of development.

Cutler replied that where she had seen moratoria work is where there is going to be a rezoning of the entire town or a major revision of the entire bylaw. Colman said that Chaput believes that a moratorium should wait until after revisions to the cluster bylaw are adopted. Colman, Tice and Yanofsky all agreed that, after this discussion, they were not sure a moratorium would have its desired effect. But, Yanofsky noted, Amherst did initiate a phasing bylaw under a moratorium. Cutler replied that the situation is different if a town is already swamped by building permit applications, a situation Yanofsky and others are only anticipating.

Tice questioned why then we shouldn't rather focus on adopting a building cap. Yanofsky doubted that there would be time to structure such a proposal before Town Meeting. Cutler suggested that Carlisle could use the Amherst model, which has worked for many towns. But LaLiberte said he could not support a building cap proposal at Fall Town Meeting, even though he is in favor of phased development. Duscha suggested that the Board needed to focus on some proposal and carry it through. Colman said that the Board can't take a proposal to Town meeting unless the Board members are 100% comfortable with it first.

Cutler explained that an annual building permit limit is an acceptable form of zoning control, but there is some question about how long such a cap can be maintained. She recommended an automatic renewal provision, including a Planning Board report and recommendation to Town Meeting as to whether it should be continued. Five year intervals, she said, would be appropriate for such review.

Cutler suggested that, apart from the constrained schedule of Fall Town Meeting, the Board could still begin now, advertise a proposed zoning change, hold a hearing, develop the proposal more fully after the hearing and put it on the warrant in the Spring (within 6 month of the hearing) as long as the scope of the change was not greater than what was originally advertised.

Apart from this, Yanofsky asked, could we put together a citizens' initiative for Fall Town Meeting in the form of a resolution that supports the adoption of growth management measures? But Colman asked whether the Moderator could prevent discussion even of this. Cutler acknowledged that he could limit discussion. Yanofsky said that she suggested this because she did not feel any bylaw change, apart from a moratorium, could be brought to this Town Meeting. Colman added that he thought a citizen's initiative could also be very divisive. But Hengeveld suggested that the issue of growth management could be introduced at Town Meeting in the context of another article, the request for funds for a consultant to prepare an Open Space bylaw.

Hengeveld **moved** to accept the judgment of the Board of Selectmen, but LaLiberte revised the motion to state **that the Board would not proceed with bringing a growth management article to Fall Town Meeting.** Tice seconded the motion, and it was **approved 6-0.** Colman offered to draft a letter of disappointment to the Selectmen with a copy to the Mosquito.

Review of Process to Complete Ice Pond Subdivision

Colman told Town Counsel Cutler that an additional extension of time to complete the subdivision road improvements until December 2, 1996, has been granted to builder Brian Hebb by the Board. However, he said, based on past experience, he does not expect the builder to ever complete the work. He asked her to explain the proper procedure to allow the Town to complete the road. Colman added that Selectman Chaput is concerned about the effect of the Town's action on Carl Hanscom, a contractor who is suing Hebb and has a claim upon the builder's performance deposit. But, he said, all parties are on notice that the Town has a first right to these funds. We owe it to the abutters, he added, to complete the road, although it can't be done this year because the asphalt plants will be closing soon.

Cutler explained that if the builder does not complete the road by December 2, he will be in default. She advised the Board to send him a letter in advance notifying him of this situation, and adding that there will be no further notice. Then, she said, have LandTech do a check list of what remains to be done and a detailed cost estimate to allow the Town to go out to bid, paying prevailing (Davis-Bacon) wages. The bond can be used to cover cost of construction, engineering, and legal fees associated with the work, i.e., drafting contracts, etc., but not for other legal costs, such as this advice. If the Town has adopted the provisions of M.G.L. that allow it, the Town can then proceed with the work without first going to Town Meeting to authorize expenditure of the funds. (Cutler will check on whether this is the case.) The work must be bid under the Uniform Procurement Act, by the Town Administrator, and the funds can be transferred to another department, such as Public Works, for expenditure.

Colman asked what will happen to the homeowners on Ice Pond Road when the subdivision approval expires. Cutler replied that the Town has no legal obligation to finish the road. If the Town does elect to do the work, it has to first determine whether the Town has the right to go on the street to do the construction, and this depends upon whether the developer has a fee interest in the road. Homeowners' deeds should contain this information, or they may have easements to use the road. Colman suggested that all this information be laid out by Cutler clearly in writing, and she agreed to do so.

She went on to explain that automatic rescission of the subdivision approval, as provided for in the Boards Rules and Regs., would probably have little effect on the homeowners. Therefore, she suggested the Board take no further action regarding the subdivision approval itself. She admitted, however, that if a bank attorney did interpret the automatic rescission provision as effective, an owner could run into a title problem. To remedy this, all the owners of the subdivide land would have to apply together to the Board to re-establish subdivision approval. She admitted that she had never seen this happen. But Colman speculated that homeowners in Ice Pond could run into trouble in selling their

property after December 2, and Tice pointed out that they may lose services, such as snowplowing and school buses.

To avoid this, Cutler explained, the Board need not let the subdivision approval expire in order to use the bond to complete the road. The Planning Board may, on its own motion, extend the subdivision approval expiration or modify the approval to waive the automatic expiration provision.

Colman asked about any liabilities the Town might incur by taking this action. Cutler replied, "No good deed goes unpunished." There can be exposure to liability, she said, when a Town steps in to do the work. Alternatively, she said, the Board could assist the homeowners in establishing their own subdivision approval, by coordinating the advertising, notice requirements, etc.

Yanofsky suggested that once a written opinion was obtained from Counsel, the Board should send a letter to the homeowners. But Cutler suggested once again that there may never be a problem for the homeowners, and the Board may not have to do anything.

Yanofsky did not agree. She said she would like to take an active role in resolving this situation, but is concerned that the bond money will not cover the general legal expenses incurred. Moreover, she pointed out, since Hebb is bring in a new subdivision application, Hunters Run, this problem should be addressed.

Colman suggested that the Board set the level of contingency on the performance guarantee on Hunters Run based on the experience of Ice Pond. Cutler reminded him that the applicant has the option of proposing the form of the performance guarantee, but the Board can determine the dollar amount to be established. She concluded by promising the opinion letter by October 17.

Review of Compliance with Special Permit Provisions - Overlook Drive Common Driveway

Colman explained that the main issue here is that construction for drainage appears to differ from what is shown in the approved special permit. Mansfield added that from his review of the files, there also appear to be some additional boulders placed along the driveway that are not on the plan, and the recorded copies of the decisions are not in the files.

Cutler suggested that the Board alert the Building Commissioner that the work does not appear to be in compliance with the approved Special Permit plan. Colman said he believed that such a letter had been sent several days ago, but Mansfield doubted that it had gone out. He said he would clarify this with the Building Commissioner. Once this notice is given, Cutler said, it is the Commissioner's responsibility to act and the Planning

Board is out of the loop. The developer then has the right to appeal the Building Commissioner's action to the Board of Appeals.

Therefore, reversing an earlier suggestion, Colman asked that LandTech not be asked to inspect the site and that the responsibility be given to the Building Commissioner.

Report: Town Center Sewer and Water Issues

Colman reported on an emergency meeting he attended on October 1 concerning the construction of the septic system for the schools on the Banta-Davis land. He said a report from the Board of Health indicated that there are major problems with wells in the town center; a plume containing a carcinogenic petroleum additive is widening. He said those meeting learned that a Town water system for this area is unaffordable because State law would require hydrants. The only alternative is to dig deeper wells, at a cost of at least \$7,500 per well.

The current wells are also being polluted by septage, he said, but there is a way to build a septic field on Banta-Davis that could be used to serve a common sewer for the town center. However, the SBAB school reimbursement could be lost unless the septic system is limited to school use, at least when it first comes on line.

Report: Finance Committee Action on Request to Fund Consultant Services to Prepare Open Space Residential Development Bylaw

LaLiberte reported that the FinComm was on the verge of approving the Planning Board's request for \$7,500 at their meeting of October 3, when Selectman Fitzgerald raised concerns about the legality of their action when a Town Meeting had been scheduled. Therefore, FinComm suggested the Board place the request on the Warrant, and assured LaLiberte that they would support it.

Yanofsky suggested that Epstein be consulted in order to formulate the scope of services for an RFP. She said it should include a review of the existing Conservation Cluster bylaw, consultation with the Board, participation in formulating a format for a public hearing, and development of a process for additional public participation, as well as preparation of a draft of the proposed bylaw itself.

Colman suggested that the consultant should not be present at the public hearing, but LaLiberte and Yanofsky disagreed. They suggested he/she also attend Town Meeting. LaLiberte added that the consultant should also help the Board to define policy goals, and identify the trade-offs involved in alternative choices. He said it would be desirable to issue an RFP and receive proposals before Town Meeting. But Mansfield suggested that a more favorable response to an RFP might be forthcoming if the proposers could know that the funds had been appropriated before submitting their proposals. He advised that

while the RFP should be issued before Town Meeting, so that it could be shown as evidence as to how the funds will be spent, the date for submitting proposals could be set about a week after Town meeting and they could be reviewed at the Planning Board meeting of November 25. This way, a contract could still be issued before the holidays.

Report: Selectmen's Meeting on Town-wide Goals

Colman reported on other issues discussed at the October 8 meeting, that had been discussed earlier regarding the growth management warrant article. He explained a presentation by a DEP official on behalf of the Board of Health, offering funding to support a study of water resources and/or betterments to help homeowners repair faulty septic systems. He said that the Selectmen had rejected this offer.

Yanofsky **moved** that the Planning Board send a letter to the *Mosquito* stating their objection to this decision of the Selectmen, and Hengeveld seconded the motion. She said that without the support such a study could provide to comprehensive planning, the Town will have difficulty controlling growth. Colman called the Selectmen's action fiscally irresponsible. But LaLiberte suggested that someone talk first to the Board of Health.

Colman thus agreed to speak with Patrice Drew, while Yanofsky said she would ask Tom Bilotta what the position of the Finance Committee is on this issue. Colman and LaLiberte both agreed that the main purpose here is to support the Board of Health. Accordingly, Yanofsky revised her motion to state **that the Planning Board offers to support the Board of Health in whatever form may be most useful leading to the acceptance of the DEP offer, including a letter to the editor.** This motion was approved 6-0.

Hengeveld reported that she had received a call from Chaput asking her to meet regarding a conservation fund issue.

Colman summarized the cost problems associated with the NESWC solid waste disposal contact discussed at the meeting. He also reported on the Library and Town Offices construction projects. He said that the Board of Appeals would like to work with the Planning Board in bring amendments to the Zoning Bylaw to Town Meeting.

Proposed Scenic Road Bylaw Amendments

Colman asked Duscha to prepare a letter to the editor for the *Mosquito* to publicize the proposed Scenic Roads bylaw. Members also agree to contact other Boards and officials to explain the Planning Board's proposed article as follows:

Duscha - Conservation Commission

Colman - Selectmen

LaLiberte - Historical Commission and Public Works Director

Colman also agreed to schedule the article for review with the Bylaw Review Committee. He asked the Planning Administrator to fax a draft copy to Town Counsel for their review.

The meeting was adjourned at 10:35 p.m.

Respectfully submitted,

George E. Mansfield
Planning Administrator